

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Waltraud ANKENBAUER, et al.

Application No.: 09/269,860

Filed: March 10, 2000

For: THERMOSTABLE NUCLEIC
ACID POLYMERASE FROM
THERMOCOCCUS GORGONARIUS

Customer No.: 41504

Confirmation No. 1720

Petitions Examiner: Frances Hicks

Office of Petitions

DECLARATION OF GEORGE C. JEN
UNDER 37 C.F.R. §1.137(b)

Mail Stop PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, George C. Jen, being duly warned that willful false statements and the like are punishable by fine or imprisonment or both (18 U.S.C. § 1001), and may jeopardize the validity of the patent application or any patent issuing thereon, state and declare as follows:

1. All statements made herein of my own knowledge are true, and statements made on information or belief are believed to be true and correct.
2. Currently, I am currently employed as Senior Director of Legal Global Partnership for Roche Palo Alto LLC (RPA). Prior to my current position at RPA, I was head of the Patent Department at Roche Molecular Systems (RMS) at 1145 Atlantic Ave., Alameda, CA. I started work at RMS in September, 2001, and left RMS for my current position at RPA on December 31, 2005.

3. I have read the Decision on Petition for this patent application. As described in more detail below, to my knowledge, the abandonment and any subsequent delay in filing a Petition to Revive the application during my tenure at RMS was unintentional. Specifically, I never received, nor was I aware of the Notice of Allowance mailed on January 9, 2002, nor did I receive nor was I aware of the Notice of Abandonment mailed on May 16, 2002. The practice of RMS Patent Department during the period from September 2001 to at least about January 8, 2003 was to rely on outside counsel dockets and, as explained further below, those dockets indicated that the application was not abandoned.

4. Immediately prior to my joining RMS in September 2001, RMS had no in-house patent counsel or agent, and relied on the docket from Pennie & Edmonds, a law firm serving as outside Patent Counsel for RMS at the time. It is my understanding that prior to my arrival at RMS, it was standard practice at RMS to forward any Patent Office correspondence to Pennie & Edmonds for their docket. The practice of forwarding Patent Office correspondence to outside counsel for docketing continued for many RMS patent applications, including the above-referenced application, while I was at RMS. Therefore, at the time the Notice of Allowance, and later the Notice of Abandonment, was mailed, I relied on Pennie & Edmond's docket report. As shown in the redacted docket from Pennie & Edmonds printed on November 22, 2002 and January 8, 2003, (Exhibits 1 and 2, respectively), there was no indication of either the Notice of Allowance or the Notice of Abandonment. Rather, the docket reports from Pennie and Edmonds listed the status of the case as "pending."

5. In view of the docket reports, I believed that Pennie and Edmonds was actively prosecuting the application and I was not aware of either a Notice of Allowance or a Notice of Abandonment. I do not remember any discussions with persons at RMS, or from Pennie and Edmonds about the Notice of Allowance or the abandoned status of the case during my employment at RMS.

6. In summary, to my knowledge, the abandonment and the entire period of delay during my tenure at RMS from the mailing of the Notice of Allowance and the mailing of

the Notice of Abandonment and any inaction thereafter was unintentional. Because I relied on outside counsel and their docket during this time, I was not aware of the abandonment status of the application and I believed that it was pending.

Date: January 8th, 2008

By:

A handwritten signature in black ink, appearing to read "George C. Jen", written over a horizontal line.

George C. Jen

RCB:rcb

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